IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 221 OF 2004

Shri Sebastian Menino Gama
Major in age,
R/o H.No.32, Voddlem Bhat,
Dabolim, P.O. Chicalim,
Marmugao – Goa. ... Applicant

versus

1. Shri Andrew Collasso,
2. Shri Valento Collasso,
3. Shri Peter Collasso

All s/o Benedito Collasso,
Major in age, r/o H. No.66,
Khapela Bhat, Dabolim,
P.O. Chicalim,
Marmugao – Goa. ... Respondent

Mr. Guru Shirodkar, Advocate for the Applicant.

Mr. D. V. Patkar, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 2ND DECEMBER, 2004.

ORAL ORDER

The complainant in C.C. No.125/P/2000/D seeks Special Leave to Appeal under Section 378(4) of the Code of Criminal Procedure, 1973, against the acquittal of the accused under Sections 323, 341, 506(I) and 379 r/w 34 I.P.C. by Judgment/Order dated 11-8-2004 of the learned Judicial Magistrate,

First Class, Vasco da Gama.

2. Upon a complaint filed by the said complainant, the accused were charged and tried under the said Sections. In the course of the trial, the complainant examined himself, his mother, P.W.2, Natalina Gomes, his mother-in-law, P.W.3, Liberata Fernandes, his sister, P.W.4, Rosalina Gama and one neighbour, namely, P.W.5, Augusta Vaz.

3. The incident appears to have taken place on 1-9-2000 when the complainant armed with an Order dated 15-3-2000 issued by the Mamlatdar in Tenancy Case No.8/1999 against the landlord, namely, one Shri Naik and accused no.1, Andrew Collasso went in the property surveyed under nos.200/6, 200/5 and 200/4 of Sancoale village claiming to be the tenant of the said landlord Shri Naik in respect of the said property. There is no dispute that the accused are residing in a portion of the said property surveyed under no.200/6 which has been sold to them by the said landlord Shri Naik. Apparently, the complainant accepts the mother of the accused to be the torlukdar/care-taker of the said property and although, it is contended by the complainant that the said mother was his torlukdar, the complainant's witness the said P.W.5, Augusta Vaz, who is stated, has a grudge with the said landlord for not having accepted her as a mundkar, considers that the said mother of the accused/the accused, were the torlukdars of the said landlord Shri Naik(and not of the complainant).

4. Mr. Guru Shirodkar, the learned Counsel appearing on behalf of

the complainant(applicant herein) contends that the findings of the learned Judicial Magistrate, First Class are perverse in that the learned Judicial Magistrate, First Class has given undue weight to minor discrepancies appearing in the evidence of the complainant and the other witnesses. Mr. Shirodkar, further submits that the said P.W.5, Augusta Vaz, who is the neighbour had admittedly reached little late and, therefore, had not seen the entire incidence but her evidence did show that the incident otherwise took place and the other complainant's witnesses were present in the said property at the time of the incident. Mr. Shirodkar submits that considering the evidence led by the complainant, the learned Judicial Magistrate, First Class was unjustified in acquitting the accused at least under Sections 341, 323, 379 r/w 34 I.P.C.

5. On the other hand, Mr. Patkar, the learned Counsel of the accused (respondents herein) has submitted that the said P.W.5, Augusta Vaz, who has a grudge against the said landlord, and whom the complainant calls an independent witness, has not at all supported the case of the complainant and that of the complainant's witnesses. Mr. Patkar, has submitted that there were two versions before the learned Judicial Magistrate, First Class, one given by the complainant and the other given by complainant's witnesses who are all related and again another given by P.W.5, Augusta Vaz. Mr. Patkar, next submits that after considering the facts meticulously, the learned Judicial Magistrate, First Class, thought it fit to acquit the accused and that the view held by the learned Judicial Magistrate, First Class was a possible view. Relying on the case of **Dhanna** v. **State of M.P.** (AIR 1996 SC 2478) Mr. Patkar, submits

that there is no doubt that this Court has full power to review the evidence and to arrive at its own conclusions whether the appeal is against conviction or acquittal. He further submits, relying upon same Judgment that this Court is required to consider that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal and every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial Court acquitted him he would retain that benefit in the appellate Court also.

6. In my view, the learned Judicial Magistrate, First Class, has meticulously analysed the evidence produced by the complainant in support of his case and has chosen to give benefit of doubt to the accused. The case of the complainant was that one of the accused, namely, accused no.2, Valento Collasso, had thrown a coconut on his head, and, throwing such a coconut would have certainly left some injury on the head of the complainant. The complainant after the incident chose not to go for any medical examination and thus, chose not to produce any medical evidence in support of his case. There were discrepancies in the evidence of the complainant and other witnesss as regards which of the accused had thrown the said coconut and the said discrepancies, in the evidence of the witnesses who were otherwise closely related to the complainant could not have been brushed aside merely by stating that they were minor discrepancies and they did affect the credibility of the said witnesses. Even P.W.5, Augusta Vaz, who is said to be a neighbour and an independent witness did not in terms support the case of the complainant. On the other hand, it was shown on behalf of the accused that she too had a

grudge against the said landlord who was arrayed as a party respondent alongwith one of the accused, before the Mamlatdar, by the complainant. In fact, the said P.W.5, Augusta Vaz, had not supported the case of the said complainant and other witnesses. Considering the evidence of the complainant and his witnesses which was full of discrepancies, in my view, the acquittal of the accused could not be said to have been unjustified. The view taken at by the learned Judicial Magistrate, First Class, on the basis of the evidence adduced by the complainant is quite a possible view. Therefore, in my view, this is not a fit case to grant Special Leave to Appeal to the said complainant.

7. Application for Special Leave, therefore, is hereby rejected.

N. A. BRITTO, J.

RD.